

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DWAYNE G. HALE
Claimant

VS.

GUARDIAN AUTOMOTIVE PRODUCTS
Respondent

AND

CIGNA
Insurance Carrier

AND

WORKERS COMPENSATION FUND

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Docket No. 183,869

ORDER

Claimant requests review of the Award and the Award Nunc Pro Tunc entered by Administrative Law Judge John D. Clark dated October 5, 1995 and October 24, 1995, respectively. The Appeals Board heard oral arguments on February 22, 1996.

APPEARANCES

Claimant appeared by his attorney, Steven L. Foulston of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Douglas C. Hobbs of Wichita, Kansas. The Workers Compensation Fund appeared by its attorney, Randall C. Henry of Hutchinson, Kansas.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

The Administrative Law Judge denied claimant's request for permanent partial disability benefits because he found that claimant had failed to prove he sustained permanent injury as a result of a work-related accident. The claimant requested this review and asks the Appeals Board to review that finding. The sole issue on this review is whether claimant permanently injured his back as a result of his work activities from approximately August 23, 1993 through the date of his termination on March 23, 1994.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The Award of the Administrative Law Judge should be affirmed.

Claimant alleges he sustained a low back injury as the result of working for the respondent between August 1993 and March 23, 1994. The respondent contends claimant's low back symptoms are not related to a permanent injury sustained at work but they are related to a car wreck that occurred in June 1993. The claimant alleges he did not injure his low back in that wreck.

Claimant testified he injured his neck and upper back when he was rear-ended in June 1993. As a result of that accident he missed one day of work immediately after the incident and several months later missed an additional three weeks of work. After that three-week period, claimant returned to work in August 1993 and began to experience symptoms in his low back. Claimant continued to work for the respondent until he was terminated on March 23, 1994 because the company would no longer accommodate his restrictions.

Claimant's treating physician, orthopedic surgeon Robert Eyster, M.D., testified that he believes claimant has a degenerative disc condition in his low back. He also believes claimant had a muscle strain in his low back from the car accident which has now resolved. The doctor testified that although claimant experienced some sore muscles in his low back, he does not believe that condition was caused by claimant's work. Dr. Eyster explained that claimant's work activities following the car accident merely temporarily aggravated the low back injuries he had sustained in the wreck.

Lawrence R. Blaty, M.D., evaluated claimant at his attorney's request. Dr. Blaty testified that claimant's injuries were caused by the June 1993 car wreck. The doctor also believes claimant experienced a temporary aggravation of his injuries when he returned to work.

Despite the above evidence, claimant contends he did not injure his low back in the June 1993 wreck. Although claimant sought treatment at a hospital emergency room immediately following the wreck, neither party introduced that report which conceivably would list the areas of the body where claimant sustained injury. However, at his deposition claimant testified that he, in fact, did experience low back pain immediately following the automobile accident.

In support of his claim for benefits, claimant presented the testimony of Ernest R. Schlachter, M.D. Dr. Schlachter testified that claimant's work activities after August 23, 1993 caused permanent aggravation and impairment to the low back.

The Appeals Board agrees with the Administrative Law Judge and finds that the greater weight of the evidence indicates claimant's low back was only temporarily aggravated by his work activities between August 1993 and March 23, 1994, and that any permanent injury claimant has sustained to the low back is the result of the June 1993 car wreck. The Appeals Board also finds claimant has failed to prove he is entitled to permanent partial disability benefits in this proceeding. These findings and conclusions are based upon the opinions of both Dr. Eyster and Dr. Blaty which the Appeals Board finds to be the most persuasive.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated October 5, 1995 and the Award Nunc Pro Tunc dated October 24, 1995 entered by Administrative Law Judge John D. Clark should be, and hereby are, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Steven L. Foulston, Wichita, KS
Douglas C. Hobbs, Wichita, KS
Randall C. Henry, Hutchinson, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director